

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAZEN FATHI SAID	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA :		NO. 08-2681

ORDER

AND NOW, this 18th day of December, 2008, upon consideration of the *pro se* Petition for Writ of Error Coram Nobis (Document No. 1, filed June 6, 2008), and after review of the record, the Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated October 31, 2008, and petitioner Said's Objections to the Report and Recommendation of United States Magistrate Judge Henry S. Perkin, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated October 31, 2008, is **APPROVED** and **ADOPTED** with the clarification that the Petition for Writ of Error Coram Nobis is denied on two (2) grounds - the writ of coram nobis is only available in federal court for individuals convicted in federal court, *Obado v. State of New Jersey*, 328 F.3d 716 (3d Cir. 2003); and, (b) because petitioner is on probation and is therefore treated for purposes of the writ of coram nobis as "in custody," the writ is unavailable to him, *Id.* at 718. To qualify for relief under the writ of coram nobis, petitioner must show that his sentence has been served and that exceptional circumstances and continuing collateral disadvantages are present. *Id.*;

2. Petitioner Said's Objections to the Report and Recommendation of United States Magistrate Judge Thomas S. Perkin are **OVERRULED**;

3. The *pro se* Petition for Writ of Error Coram Nobis is **DISMISSED**; and,

4. A certificate of appealability will not issue because reasonable jurists would not debate whether the petition states a valid claim of the denial of a constitutional right or this Court's procedural rulings with respect to petitioner's claims. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.